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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,369	04/23/2001	Francis J. Binder	CMD 215X	3826

22222 7590 05/23/2002

GEORGE R CORRIGAN
5 BRIARCLIFF COURT
APPLETON, WI 54915

EXAMINER

SAINT SURIN, JACQUES M

ART UNIT PAPER NUMBER

2856

DATE MAILED: 05/23/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/840,369

Applicant(s)

BINDER ET AL.

Examiner

Jacques M Saint-Surin

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2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/17/01, 08/02/01 and 4/23/01.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 1-48 are objected to as being in improper form because claims 5 and 11 are misnumbered as having two different claims numbered as 5 and 11, and therefore render the dependency of claims 6-13 improper. Furthermore, there are no claims 10 and 12. However, for the purpose of examination, the Examiner renumbers the claims as follows: Claim 5 (second occurrence) is being renumbered as claim 6 and original claims 6-11 are being renumbered as claims 7-12. In addition the dependency of the claims is being also modified accordingly based to the original numbering

Claim Rejections - 35 USC § 112

2. Claims 1-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

While applicant may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term. See *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). The term "force" in claims 1-48 is used by the claim to mean "force signal," while the accepted meaning is "acoustic signal or ultrasonic signal or ultrasound signal" because, the acceptable term "force" in the art is used when referring to testing impact delivering device (e.g. a hammer).

Claim 32 recites a bag machine in the preamble while the body of the claim does not recite any limitations relating to a bag machine.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-31 and 43-48 are rejected under 35 U.S.C. 102(b) as being anticipated by McDaniel et al. (US Patent 5,285,678).

Regarding claim 1, McDaniel et al. ('678) discloses an apparatus for detecting a seal on a film (method and apparatus for nondestructively testing sealed containers to proof test for seal leaks present in one or more container seals, see: abstract), comprising:

a force transmitter (differential pressure across the primary seal in order to provide a driving force for fluid transfer either into or out of the sealed internal container compartment, see: col. 29, lines 34-38) disposed to transmit a force from the film;

a force sensor (detector means 34, see: col. 29, lines 43-45 and) disposed to receive the transmitted force and provide a force signal in response thereto; and

a controller, disposed to receive the force signal and provide a seal signal in response thereto (output signal from the detector 34 can be analyzed and connected to a threshold sensing device, see: col. 29, lines 57-58).

Regarding claim 15/16, it is a method claim that recites the steps for performing the functions of the apparatus claim 1.

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Regarding claim 24, it is a means-plus-function claim that recites the means for performing the functions of the apparatus of claim 1.

Regarding claims 2-4, 6, 17-19, 27-28, and 44-45, McDaniel et al. ('678) discloses various types of acoustical, electrical or optical sensors can alternately perform the same function based on a different mode of action for sensing a manifestation associated with a leak through the seal 23, see: col. 29, lines 52-56.

Regarding claims 7-11, McDaniel et al. ('678) discloses a movable rod 63a connected to the probe 57 for controllably moving the probe and impressing it into and through a suitable marginal edge portion of the container being tested, see: col. 16, lines 65-68.

Regarding claims 12-14, 21-23, 29-31 and 46-48, McDaniel et al. ('678) discloses threshold sensing device which instructs automated processing to divert container into a reject conveyor system, see: col. 29, lines 58-62.

5. Claims 1-11, 14-20, 24-28 and 32-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Huben et al. (US Patent 5,861,078).

Regarding claims 1, 15, 24, 32 and 43, Huben et al. ('078) discloses a force transmitter (roller 37 or 36), a force sensor (seal sensor near the film path, see: col. 4, line 12) and a controller (seal sensor provides a seal signal indicative of a seal location and controller controls the location of the film on which downstream processor acts in response to the seal signal, see: col. 4, lines 8-17). Regarding claim 15/16, it is a method claim that recites the steps for performing the functions of the apparatus claim

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1. Regarding claim 24, it is a means-plus-function claim that recites the means for performing the functions of the apparatus of claim 1.

Regarding claim 32, Huben et al. discloses a plastic bag machine 10 that includes a force transmitter (sealing drum and at least one seal bar, see: col. 4, lines 8-9), a force sensor (seal sensor near the film path, see: col. 4, line 12), at least one upstream processing device (continuous plastic film), at least one downstream processing device (downstream processor) and a controller (seal sensor provides a seal signal indicative of a seal location and controller controls the location of the film on which downstream processor acts in response to the seal signal, see: col. 4, lines 8-17).

Regarding claim 43, as discussed above, it is rejected for the reasons set forth for claim 1. Furthermore, Huben et al. discloses film 11 is fed in direction of the arrows from film source 13 through the dancer and idler rolls to the blanket and drum assembly 14; as the film 11 passes over the idler roller 12b, detector 19 reads the position of the registration mark 100 relative to the active sealing bars, see: col. 8, lines 10-14.

Regarding claims 3, 6, 18, 27, 33 and 35, Huben et al. ('078) discloses detector 23 such as an electric eye or magnetic sensor. Regarding claims 5 and 34, Huben ('078) discloses a blanket 32 is mounted on rollers 34, 35, 36 and 37 for surrounding a portion of drum 28 in such a way that the film 11 passes between blanket 32 and drum 28 while seals are being formed, see: col. 6, lines 5-9.

Regarding claims 7-11, 20 and 36-38, Huben et al. discloses a rod 43 causes rollers 34 and 35 to move the dotted line position when the drum diameter decreases, thereby maintaining tension of blanket 32 against drum 28, see: col. 6, lines 14-17.

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Regarding claim 39, Huben et al. (078) discloses controller 15 include analog circuits or any other device that provides the proper outputs in response to the inputs, see: col. 7, lines 46-49).

Regarding claims 40-42, Huben et al. discloses a downstream perforator/cutting station for forming a perforation on the film with respect to the location of the seal and the perforation is properly registered to the seal by sensing the seal location directly, see: abstract.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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7. Claims 2, 5, 17, 19, 26, 28 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel et al. (US Patent 5,285,678) in view of Huben et al. (US Patent 5,861,078).

These claims differ from Huben et al. by specifically reciting acoustic and vibration sensors. However, it is known that various types of acoustical, electrical or optical sensors can alternately perform the same function based on a different mode of action for sensing a manifestation associated through a sample, seal, etc.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Goodman et al. (US Patent 6,122,966) discloses an ultrasonic leak detecting lubrication apparatus and method of use.

Goodman et al. (US Patent 6,122,966) discloses ultrasonic leak detecting lubrication apparatus and method of use.

Suga (US Patent 5,653,085) discloses a sealing device for packaging machine.

Hayase et al. (US Patent 3,825,750) discloses a method and apparatus for detecting seals on bag-shaped articles.


Mally et al. (US Patent 5,226,316) discloses a package leak detection.

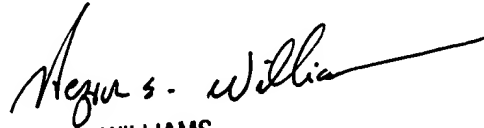
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacques M Saint-Surin whose telephone number is (703) 308-3698. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308 0956.


Jacques M. Saint-surin
May 17, 2002


HEZRON WILLIAMS
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